

U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

BA



U.S. Citizenship
and Immigration
Services

FILE:

EAC 02 121 51946

Office: VERMONT SERVICE CENTER

Date:

MAY 17 2004

IN RE:

Petitioner:
Beneficiary:

PETITION: Petition for Special Immigrant Battered Child of Permanent Resident Pursuant to Section 204(a)(1)(B)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(iii)


ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and was appealed. The Administrative Appeals Office (AAO) remanded the case for the entry of a new decision. The director again denied the petition and certified its decision to the AAO. The director's decision will be affirmed and the appeal will be dismissed.

The petitioner is a native and citizen of Mexico who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(iii), as the battered child of a lawful permanent resident.

The director denied the petition, finding that the petitioner is not a child of a United States citizen or lawful permanent resident and is therefore ineligible for the desired classification. The director further noted that the petitioner's father had been ordered removed¹ from the United States on November 5, 1999, more than two years prior to the filing date of the petition; therefore, the petitioner had not established that she was the child of a citizen or lawful permanent resident when the petition was filed, because the parent lost his status in the United States.

On appeal, the petitioner asserted that the director should consider the fact that she was a child when her father filed a Form I-130 on her behalf. The petitioner asserted that under the provisions of the Child Status Protection Act, the Form I-360 self-petition should relate back to the date then the Form I-130 petition was filed. On certification, the petitioner asserts that she has two United States citizen children and is expecting a third. She states that she is afraid if she is returned to Mexico, her father will find her and her children. She further asserts that she has no personal knowledge that her father was removed in 1999 because her family separated in 1998 due to her father's violent nature.

Section 204(a)(1)(B)(iii) of the Act provides, in pertinent part, that an alien who is the child of an alien lawfully admitted for permanent residence of the United States, or who was a child of an alien lawfully admitted for permanent residence who within the past 2 years lost lawful permanent resident status due to an incident of domestic violence, and who is a person of good moral character, who is eligible for classification under section 203(a)(2)(A), and who resides, or has resided in the past, with the lawful permanent resident parent may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Attorney General that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's permanent resident parent.

The regulation at 8 C.F.R. § 204.2(e) states, in pertinent part:

Self-petition by child of abusive citizen or lawful permanent resident—Eligibility. (i) A child may file a self-petition under section 204(a)(1)(A)(iv) or 204(a)(1)(B)(iii) of the Act if he or she:

(A) Is the child of citizen or lawful permanent resident of the United States;

¹ According to Citizenship and Immigration Services records, the petitioner's father was ordered removed on November 5, 1999.

- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;
- (C) Is residing in the United States;
- (D) Has resided . . . with the citizen or lawful permanent resident parent;
- (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident parent while residing with that parent;
- (F) Is a person of good moral character.

The petitioner indicates that she entered the United States without inspection in March 1993. According to the evidence on the record, the petitioner was born on March 2, 1975 to [REDACTED] and [REDACTED] in Mexico. According to the evidence on the record [REDACTED] filed a Form I-130 petition on the petitioner's behalf on February 3, 1994, that was approved on March 11, 1994 (WAC 94 085 50111). The petitioner filed a Form I-360 petition on February 25, 2002 when she was 26-years old.

The director denied the Form I-360 petition, finding that the petitioner was ineligible for classification as a battered child of a United States citizen or lawful permanent resident because she was over 21 years of age when she filed the petition.

The petitioner asserted that the Child Status Protection Act (CSPA) protects or preserves the petitioner's priority date and exempts the petitioner from meeting the statutory age requirement.

Congress enacted the Child Status Protection Act (CSPA) in 2002, Pub. L. No. 107-208, 116 Stat. 927 (Aug. 6, 2002) to provide for continued classification of certain aliens as children in cases where the aliens "age out" – turn 21 years of age – while awaiting immigration processing. In other words, the law was enacted to prevent children from "aging-out" due to CIS delays.² Section 204(a)(1)(D)(i) of the Act, 8 U.S.C. § 1154 (a)(1)(D)(i) provides that the Form I-360 petition must have been filed or approved before the date on which the child turns 21.

The petitioner filed a Form I-360 petition on February 25, 2002, more than two years after she turned 21 years of age. The Child Status Protection Act is inapplicable in the instant case. There is no question of "aging out" between the time she filed the Form I-360 petition and the date of adjudication of the Form I-360 petition. The stated purpose of CSPA is to permit an applicant for certain benefits to *retain* classification as a "child" under the Act, even if he or she has reached the age of 21. Here, the petitioner was over age 21 at the time of the filing of the Form I-360 petition; hence, she is statutorily ineligible for the classification. Further, the CSPA does not extend benefits to children of lawful permanent residents. As the petitioner's father was not a United States citizen, the petitioner cannot avail herself of the protection of Section 204(a)(1)(D)(i)(I) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

² See U.S. Dept. of Justice, Immigration and Naturalization Service Memorandum from Johnny Williams, Executive Associate Commissioner, Office of Field Operations, dated September 20, 2002. (HQADN706.1.1)

ORDER: The appeal is dismissed and the director's decision dated October 15, 2003 is affirmed.